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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

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COMMENTS OF WORLDCOM, INC.
ON PETITIONS FOR RECONSIDERATION

WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS WorldCom"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules and paragraph 300 of the *Report and Order* in this docket,¹ submits the following response to the petitions for reconsideration filed in this docket.

SUMMARY

Approximately 30 parties, including LDDS WorldCom, requested reconsideration of the *Report and Order*. LDDS WorldCom agrees fully with Sprint, Cable & Wireless, AT&T, and others that the interim and permanent compensation plans adopted in the *Report and Order* violate Section 276's mandate that compensation be "fair" to all parties, are inconsistent with the Commission's reasoning in its seminal *Interconnection Order*,² and arbitrarily apply the "primary economic beneficiary" principle endorsed by the Commission. LDDS WorldCom also opposes the attempts by some LECs to collect compensation on 0+

¹ 47 C.F.R. § 1.429(f); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, FCC 96-388 (rel. Sept. 20, 1996).

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-328 (rel. Aug. 8, 1996).

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and/or other calls at the same time that they are exempted from the statutory obligation to pay compensation for the calls that they carry.

DISCUSSION

LDDS WorldCom petitioned the Commission for reconsideration of its transitional per-phone compensation plan on the grounds that the compensation amount was improperly established and that the obligation to contribute to the Commission's transitional plan was discriminatorily allocated. Cable & Wireless, AT&T, and Sprint all agree with LDDS WorldCom that Section 276's mandate that compensation be paid for "each and every" completed call does not allow an exception from the compensation plan for calls routed to LECs or small IXC's, nor does it permit the Commission to require large IXC's to shoulder the statutory payment obligations of these entities.³ Sprint, for example, noted that the effect of this error raises the compensation obligations of large IXC's by over 20 percent.⁴ In fact, LECs -- which collectively completed nearly 24 *billion* intraLATA toll calls in 1994⁵ -- surely had a substantial share of access code and subscriber 800 traffic. With many LECs expanding their activities in the interLATA market, their share of compensable calls during the per-phone compensation period is likely to increase as well. Accordingly, the Commission has no rational basis for excluding LECs and small IXC's from participating in

³ Cable & Wireless Petition at 12; AT&T Petition at 16; Sprint Petition at 10; MCI Petition at 22. As Cable & Wireless noted, this result is inconsistent with the Commission's conclusion that the primary economic beneficiary of payphone calls should pay compensation to the PSP. Cable & Wireless Petition at 12-13.

⁴ Sprint Petition at 10; *see also* LDDS WorldCom Petition at Exhibit 1 (recalculating payment obligations).

⁵ *Statistics of Communications Common Carriers*, 1994/95 Ed., Table 2.6.

the transitional per-phone compensation plan.

Moreover, many petitioners agreed with LDDS WorldCom that the per-call rate on which the \$45.85 compensation amount is based awards an unjustified windfall to PSPs. Several petitioners agree that a PSP's local coin rate is an invalid surrogate for PSP costs because it includes a number of costs -- most notably the costs of coin processing capabilities and of local measured usage charges -- that are not incurred for access code and subscriber 800 calls.⁶ As AT&T demonstrates in its petition, excluding these (and other) cost differences would reduce the compensation from \$0.35 per call to \$0.06-0.10 per call.⁷ Moreover, the Commission's refusal to use a marginal cost standard is inconsistent with the Commission's TELRIC standard adopted in the *Interconnection* proceeding.⁸ The Commission's failure to recognize these differences will significantly, and adversely, impact consumers, particularly given the fact that, as Sprint observes, a \$0.35 per call compensation amount substantially exceeds a carrier's *total* charges to subscribers for toll-free calls.⁹ Consumers, therefore, could see rate increases of over 100 percent, all directly attributable to this new government requirement. Such a compensation amount cannot satisfy the statutory condition that compensation be "fair" -- which necessarily requires fairness to *all* parties.¹⁰ Finally, LDDS WorldCom agrees that, assuming a "local coin rate" could be used, the

⁶ AT&T Petition at 8-10; Cable & Wireless Petition at 5-6; MCI Petition at 12; PageNet Petition at 9-16; Sprint Petition at 3.

⁷ AT&T Petition at 7 & n.6.

⁸ See AT&T Petition at 5-7; PageNet Petition at 6-8; Sprint Petition at 5.

⁹ Sprint Petition at 6.

¹⁰ AT&T Petition at 7-8.

Commission lacks sufficient record evidence to conclude that the rates for the four rural states it identified are representative of what "deregulated" payphone rates would be throughout the country.¹¹

Although LDDS WorldCom confined its petition to issues which relate to the Commission's transitional per-phone compensation plan, it agrees that other aspects of the *Report and Order* should be reconsidered as well. LDDS WorldCom agrees, for example, that because the Commission's plan covers "each and every completed interstate and intrastate call," state payphone compensation plans would provide double payment to PSPs. Therefore, the Commission should clarify that its rules supersede any state payphone compensation plans.¹² In addition, LDDS WorldCom agrees that all PSPs should be required to pass payphone information digits as a prerequisite for eligibility to receive compensation.¹³

LDDS WorldCom also agrees with a number of petitioners that the Commission compounds its error in establishing the compensation amount when it allows each PSP to set its own compensation for each individual payphone.¹⁴ This arrangement, as Sprint notes, is fraught with difficulties verifying local coin rates and creates a significant risk of fraud by individual PSPs.¹⁵ In fact, LDDS WorldCom would not be surprised to see PSP surcharges

¹¹ MCI Petition at 15; AT&T Petition at 10-11 (noting that the states identified contain only 2% of payphones in the U.S.).

¹² See AT&T Petition at 23; MCI Petition at 22.

¹³ AT&T Petition at 23; MCI Petition at 9; Sprint Petition at 18.

¹⁴ See, e.g., AT&T Petition at 13-15; Cable & Wireless Petition at 7-10.

¹⁵ Sprint Petition at 11-12.

(for that is what they are) on access code and subscriber 800 calls in the \$1-2 per call range from many phones.¹⁶ The Commission, which is attempting in other pending dockets to bring payphone rates under control, should not detract from those efforts by establishing a system which encourages PSPs to assess large, hidden surcharges on access code and subscriber 800 calls placed from payphones.

Furthermore, LDDS WorldCom agrees with those carriers that oppose the requirement that so-called "facilities-based carriers" pay compensation for calls billed to end users by resellers. There are several serious problems with this requirement.¹⁷ Most significantly, the *Report and Order* is seriously flawed in its assumption that all carriers are readily identifiable as either "facilities-based carriers" or "resellers." As Sprint points out in its petition, even the largest IXC's are resellers to the extent that they rely on termination services provided by other carriers.¹⁸ As a result, there will be many situations where two carriers will disagree over which one has a responsibility to measure compensable calls and remit payments to the PSP. For example, as large LECs enter the long distance business, even on an in-region basis, they too will use transport and termination services provided by other carriers. Such a network arrangement constitutes "resale" as the term generally is used, suggesting the absurd result that a LEC, which is the dominant facilities-based carrier within its local service regions, would be relieved of the obligation to measure long distance

¹⁶ See Cable & Wireless Petition at 6-7.

¹⁷ For example, the Commission completely fails to address the very real question of whether facilities-based carriers will be able to recover these payments from their reseller customers. See also MCI Petition at 17; Sprint Petition 15-16.

¹⁸ Sprint Petition at 15 n.13.

calls traversing its network, even though it must measure intraLATA toll calls routed exclusively through its own facilities. This result could not have been intended by the Commission.¹⁹

LDDS WorldCom continues to believe that LECs are in the best position to track compensable calls originating from payphones to which they provide access services, and can most efficiently administer bills for compensation.²⁰ However, if the call tracking obligation ultimately is to be placed on IXC's, LDDS WorldCom urges the Commission to adopt much more specific standards to delineate the obligations of PSPs and carriers to measure, bill and remit per-call compensation. LDDS WorldCom agrees with Sprint, for example, that PSPs should be required to bill all IXC's from whom they expect payment.²¹ Conversely, all carriers which provide service directly to end users should have the responsibility to track access code and subscriber 800 traffic. For access code calls, the obligation to measure any individual call should be placed on the carrier operating the first switch (after the LEC) which both processes the call and validates the authorization code entered by the end user. The carrier that controls the authorization code will be in the best position among IXC's to know whether (1) the call is originated from a payphone; (2) the call

¹⁹ The same absurd result would affect calls handled by small IXC's. For example, many small IXC's issue calling cards and administer their cards through their own switching equipment, even though they use a network such as WorldCom's to terminate the calls. Even though these IXC's are in a much better position than LDDS WorldCom to know whether a call originated from a payphone and was completed to the called party, the *Report and Order* places the burden of tracking this call on LDDS WorldCom.

²⁰ See LDDS WorldCom Comments at 14-16. Call compensation tracking can be considered a part of payphone access service, just like originating line screening and certain call blocking capabilities are considered part of the LEC's' access services.

²¹ Sprint Petition at 17.

was made using an access code, and (3) the call was completed and billed to the end user. Using this objective standard, LDDS WorldCom will be responsible for tracking all payphone calls made by its own cardholders, even when such calls terminate over resold facilities provided by another carrier. Conversely, LDDS WorldCom's carrier customers will be obligated to measure their own calling card calls.

There is recent Commission precedent to support imposing the measurement obligation on the carrier providing the initial point of switching. In the context of the interconnection of international private lines to the U.S. public switched network, the Commission recently amended its rules requiring the reporting of these arrangements to clarify that "the carrier that we require to report the interconnection is the carrier that is itself making the physical interconnection at its switch, including any switch in which the carrier obtains capacity, whether by lease or otherwise."²² This clarification was adopted in recognition of the fact that only the carrier operating the switch would know whether the international private line is interconnected in the manner described by the Commission.

The Commission should adopt a similar standard governing the tracking of subscriber 800 traffic. The carrier whose originating trunk groups are associated with the SMS/800 database query will be in the best position to determine when a toll free call is compensable. This carrier should track the call. However, as with access code calls, the PSP should be required to bill every provider from which it expects to receive payment.

Finally, LDDS WorldCom opposes the attempt by BellSouth and Ameritech to obtain

²² *Regulation of International Accounting Rates*, Third Report and Order and Order on Reconsideration, CC Docket No. 90-337, Phase II, FCC 96-160, ¶ 21 (rel. May 20, 1996).

interim compensation for 0+ calls.²³ This proposal is completely inequitable for several reasons. First, as long as the LECs continue to receive payphone subsidies (or, in the case of Ameritech, usage fees which recover those subsidies), they already are "fairly compensated" for each and every call made using their payphones.²⁴ Second, the FCC incorrectly has *already* granted the LECs a subsidy from the transitional compensation plan in that they are arbitrarily excluded from paying compensation during the interim period. It would be patently unfair to allow the LECs to collect from a compensation plan structured in this way. Third, the BOCs' claim to compensation for 0+ calls ignores the fact that they could begin negotiating with IXCs for presubscription of their payphones as soon as they receive approval of their CEI plans, subject only to the limitation that they may not interfere with existing contracts for such obligation. Thus, the BOCs already have an opportunity to collect fair compensation according to the terms that Congress mandated in Section 276. For these reasons, the Commission should deny BellSouth's and Ameritech's requests for compensation for 0+ calls.

CONCLUSION

For the foregoing reasons, and for the reasons explained in its Petition for Reconsideration, LDDS WorldCom recommends that the Commission reconsider the amount and administration of its interim and permanent compensation plans. The Commission should set a fair compensation amount which is based upon PSPs' marginal costs in

²³ Ameritech Petition at 9 n.16; BellSouth Petition at 6.

²⁴ See *Report and Order* at ¶ 125.

originating access code and dial around calls, should include all carriers receiving compensable calls in its per-phone compensation plan, and should preempt any state compensation plans for the same calls. In addition, the Commission should clarify its facilities-based/resale distinction, and assign call tracking responsibilities to the LECs or to the IXC providing the switching and billing functions for a call. Finally, the Commission should not allow LECs to receive double recovery during the interim compensation period.

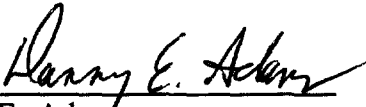
Respectfully submitted,

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